

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 03-005-12-1-3-20519-15
03-005-16-1-3-00061-17
03-005-17-1-3-00801-17
Petitioner: Joe A. Wettschurack Trust
Respondent: Bartholomew County Assessor
Parcel: 03-96-19-230-004.700-005
Assessment Years: 2012, 2016 and 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Joe A. Wettschurack Trust (“Petitioner”) contested the 2012, 2016 and 2017 assessments on its property located at 1340 12th Street in Columbus, Indiana 47201. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination for 2012 valuing the subject property at \$179,110 on November 17, 2015. It then issued its final determination for 2016 valuing the property at \$281,000 on December 16, 2016. The Parties waived the PTABOA review for the property’s 2017 assessment of \$323,200, and agreed that the Petitioner could pursue direct appeal to the Indiana Board of Tax Review (“Board”). The Petitioner timely filed Form 131 appeals.
2. On October 11, 2018, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the subject property.
3. Milo Smith, certified tax representative, represented the Petitioner. Ginny Whipple appeared for the Assessor as a local government representative. Smith, Whipple, Lew Wilson, the Bartholomew County Assessor, and Monty Ewing, an appraiser, testified under oath or affirmation.

RECORD

4. The official record contains the following exhibits submitted by the parties:

Petitioner’s Exhibit 01:	July 31, 2018 Orders from the Board,
Petitioner’s Exhibit 02:	E-mail from Milo Smith to Monty Ewing,
Petitioner’s Exhibit 11:	2011 Property Record Card (“PRC”),
Petitioner’s Exhibit 12:	2012 PRC,
Petitioner’s Exhibit 13:	2013 PRC,

Petitioner's Exhibit 14:	2014 PRC,
Petitioner's Exhibit 15:	2015 PRC,
Petitioner's Exhibit 16:	2016 PRC,
Petitioner's Exhibit 17:	2017 PRC,
Petitioner's Exhibit C2:	GIS map of neighboring parcels
Petitioner's Exhibit E1:	September 11, 2018 e-mail from Pam Layton to Lew Wilson and Ginny Whipple
Petitioner's Exhibit E2:	"Request for Information" dated September 20, 2018,
Petitioner's Exhibit E3:	October 4, 2018 e-mail from Milo Smith to Ginny Whipple,
Petitioner's Exhibit E4:	October 5, 2018 e-mail from Ginny Whipple to Milo Smith,
Petitioner's Exhibit P1:	Plat map of subject property,
Petitioner's Exhibit P2:	Plat map of subject property,
Petitioner's Exhibit S1:	Summary of the subject property's assessments,
Petitioner's Exhibit PIC 1:	Picture of the subject property,
Petitioner's Exhibit PIC 2:	Picture of the subject property,
Petitioner's Exhibit PIC 3:	Picture of the subject property,
Petitioner's Exhibit PIC 4:	Picture of the subject property,
Petitioner's Exhibit PIC 5:	Picture of the subject property.
Respondent's Exhibit A:	Resumes,
Respondent's Exhibit B:	Statement of Professionalism,
Respondent's Exhibit C:	2011 PRC,
Respondent's Exhibit D:	2012 PRC,
Respondent's Exhibit D.1:	2015 PRC,
Respondent's Exhibit D.2:	2016 PRC,
Respondent's Exhibit D.3:	2017 PRC,
Respondent's Exhibit E:	Aerial photo of subject,
Respondent's Exhibit F:	Appraisal report prepared by Monty Ewing.

All of the above exhibits were admitted into evidence without objection, except for the appraisal report, Respondent's Ex. F.

5. The official record for this matter includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a digital recording of the hearing.

OBJECTIONS

6. The Petitioner objected to all of the Respondent's witnesses because the Respondent did not provide a witness list as requested under 52 IAC § 3-1-5. The Petitioner requested this list on September 11, 2018, one month before the hearing. Although Whipple made some conclusory statements that a list was exchanged, the emails provided by the Petitioner only show that the appraisal report was exchanged on October 5, 2018. We

credit Smith's testimony on this matter and find that the Respondent failed to provide a list of witnesses as required. We decline to exclude the testimony of Lew Wilson, the Assessor, or Ginny Whipple, the Assessor's representative, because those witnesses should have reasonably been anticipated by the Petitioner. But we do exclude the testimony of Monty Ewing, the Respondent's appraiser, based on this objection.

7. In addition, the Petitioner objected to Respondent's Ex. F, the appraisal report, because the Respondent failed to provide a copy five business days before the hearing as required by 52 IAC § 3-1-5. The Petitioner requested the exchange of evidence on September 11, 2018, one month before the hearing. The Appraisal report was exchanged on October 5, 2018.¹ Whipple admitted that this was not five business days before the hearing, but argued that this delay was excusable and necessary because of the Petitioner's delay in providing access to the property to the Respondent's appraiser until after the Respondent's Motion to Compel Access had been granted.
8. Ewing, the appraiser, received access to the property on August 8, 2018, more than two months before the scheduled hearing date. If this time frame was insufficient for the Respondent to comply with the evidence exchange rules, he should have requested a continuance. The Tax Court in *Evansville Courier v. Vanderburgh Co. Ass'r*, 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) (citing *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 179 (Ind. 1993)) stated "This Court has explained as a general matter that the purpose of the discovery rules is 'to allow a free exchange of fact information and to permit each party to prepare its case for trial without concerns about trial by surprise or ambush.'" The intent of the exchange rule is to allow parties to have sufficient time to review the evidence in preparation for a hearing. The Assessor's failure to timely deliver the appraisal violated the rule and denied the Petitioner this opportunity. Thus, we exclude the appraisal report, Respondent's Ex. F.

SUMMARY OF PARTIES' CONTENTIONS

9. **Respondent's case:**
 - a. The Respondent offered several exhibits, including resumes for Whipple, Wilson and Ewing; copies of Property Record Cards for the subject property from 2011, 2012, and 2015-2017; a "Statement of Professionalism"; and an aerial view of the property. The remainder of the Assessor's case was based on the excluded appraisal and testimony. *Resp. Exs. A-E; Whipple testimony.*
 - b. Whipple argued that the Petitioner's evidence and argument related solely to the methodology employed by the Assessor. *Whipple testimony.*

¹ Although both parties stated this was four business days before the hearing, we find it was actually three business days because October 8, 2018, was Columbus Day, a legal State holiday, which does not count as a business day under the time computation rule. See 52 IAC § 2-3-1(b) and Indiana R. Trial P. 6(A).

- c. The Respondent requested that the Board determine the property's assessed value for the disputed years consistent with the values contained in the excluded appraisal: \$187,000 for 2012; \$317,000 for 2016; and \$325,000 for 2017. *Resp. Ex F at 2; Whipple testimony.*

10. **Petitioner's case:**

- a. The Petitioner argued that the Assessor made a number of errors in applying the Real Property Assessment Guidelines including using incorrect base rates, and incorrectly classifying the building. The Petitioner also made a number of criticisms of the appraisal report, which we do not address because it is excluded from evidence. *Pet'r Ex. 11-17 and PIC 1-5; Smith testimony.*

BURDEN

11. Generally a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
12. The assessed value of the subject property in 2012 was \$179,110, which represented an increase of more than 5% over the 2011 assessed value of \$143,200. Both parties agreed that the burden for 2012 was on the Assessor. The assessed value for 2016 was \$281,000, which followed an assessment of \$286,400 for 2015. The Parties agreed that the burden for 2016 fell on the Petitioner. The burden for 2017 depends on our resolution of 2016, which we address below.

ANALYSIS

13. Whipple failed to establish a prima facie case to support the assessments for either 2012 or 2017, and Smith failed to present probative evidence for the 2016 assessment year. The Board reached this decision for the following reasons:
 - a. Indiana assesses property based on its "true tax value", which is determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). The DLGF defines "true tax value" as "market value-in-use", which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user,

from the property. 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with the standard. For example, USPAP-compliant market value-in-use appraisals often will be probative. *See id.*; *see also, Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

- b. As discussed above, the Respondent had the burden to support the 2012 assessment of \$179,110. Without the excluded exhibit and testimony, the Respondent failed to provide any probative evidence to support the assessment. Where the Assessor fails to present evidence sufficient to support a proposed increase, the assessed value for the year in dispute reverts to the previous year. Therefore, the 2012 value reverts to the 2011 assessment value of \$143,200. I.C. § 6-1.1-15-17.2(b).
- c. The Petitioner had the burden to show that the 2016 assessed value of \$281,000 was incorrect. Although it offered a number of arguments regarding tax rates and classification, all of these go solely to the methodology used by the Assessor. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Even if the Assessor made errors, simply attacking their methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.* The Petitioner failed to do so.
- d. In addition, it offered no proposed final valuations for any of the disputed years, including 2016. Even, if he had presented appropriate, relevant evidence of value, it is unclear what relief it sought in 2016. Thus, the Petitioner failed to meet its burden for 2016, and the assessment for that year remains unchanged.
- e. Finally, because the 2017 assessment of \$323,200 was a greater than 5% increase over the 2016 assessment of \$281,000, the Respondent has the burden for that year. As with the 2012 assessment discussed earlier, the Respondent offered no probative evidence to support the 2017 assessment other than the excluded evidence. Therefore, the 2017 assessment reverts to the 2016 value of \$281,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order that the assessed value for 2012 should revert to \$143,200; the assessed value for 2016 should remain \$281,000; and that the assessed value for 2017 should revert to \$281,000.

ISSUED: January 9, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.